

SECURITIES INVESTOR PROTECTION ACT OF 1970

DECEMBER 18, 1970.—Ordered to be printed

Mr. STAGGERS, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 19333]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 19333) to provide greater protection for customers of registered brokers and dealers and members of national securities exchanges, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE, ETC.

(a) *SHORT TITLE; TABLE OF CONTENTS.*—*This Act, with the following table of contents, may be cited as the "Securities Investor Protection Act of 1970".*

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(b) **SECTION HEADINGS.**—Headings for sections and subsections, and the table of contents, are included only for convenience, and shall be given no legal effect.

SEC. 2. APPLICATION OF SECURITIES EXCHANGE ACT OF 1934.

Except as otherwise provided in this Act, the provisions of the Securities Exchange Act of 1934 (15 U.S.C. sec. 78a and fol.; hereinafter referred to as the "1934 Act") apply as if this Act constituted an amendment to, and was included as a section of, such Act.

SEC. 3. SECURITIES INVESTOR PROTECTION CORPORATION.

(a) **CREATION.**—There is hereby established a body corporate to be known as "Securities Investor Protection Corporation" (hereinafter in this Act referred to as "SIPC"). SIPC shall be a nonprofit corporation and shall have succession until dissolved by act of the Congress. SIPC shall—

- (1) not be an agency or establishment of the United States Government;

(2) be a membership corporation the members of which shall be—

(A) all persons registered as brokers or dealers under section 15(b) of the 1934 Act, and

(B) all persons who are members of a national securities exchange,

other than persons whose business as a broker or dealer consists exclusively of (i) the distribution of shares of registered open end investment companies or unit investment trusts, (ii) the sale of variable annuities, (iii) the business of insurance, or (iv) the business of rendering investment advisory services to one or more registered investment companies or insurance company separate accounts; and

(3) except as otherwise provided in this Act, be subject to, and have all the powers conferred upon a nonprofit corporation by, the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29-1001 and fol.).

(b) **POWERS.**—In addition to the powers granted to SIPC elsewhere in this Act, SIPC shall have the power—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, in any court, State or Federal;

(2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) subject to the provisions of this Act, to adopt, amend, and repeal, by its Board of Directors, bylaws and rules relating to the conduct of its business and the exercise of all other rights and powers granted to it by this Act;

(4) to conduct its business (including the carrying on of operations and the maintenance of offices) and to exercise all other rights and powers granted to it by this Act in any State or other jurisdiction without regard to any qualification, licensing, or other statute in such State or other jurisdiction;

(5) to lease, purchase, accept gifts or donations of or otherwise acquire, to own, hold, improve, use, or otherwise deal in or with, and to sell, convey, mortgage, pledge, lease, exchange or otherwise dispose of, any property, real, personal or mixed, or any interest therein, wherever situated;

(6) subject to the provisions of subsection (c), to elect or appoint such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, to fix their salaries, require bonds for them and fix the penalty thereof;

(7) to enter into contracts, to execute instruments, to incur liabilities, and to do any and all other acts and things as may be necessary or incidental to the conduct of its business and the exercise of all other rights and powers granted to SIPC by this Act; and

(8) by bylaw, to establish its fiscal year.

(c) **BOARD OF DIRECTORS.**—

(1) **FUNCTIONS.**—SIPC shall have a Board of Directors which, subject to the provisions of this Act, shall determine the policies which shall govern the operations of SIPC.

(2) **NUMBER AND APPOINTMENT.**—The Board of Directors shall consist of seven persons as follows:

(A) One director shall be appointed by the Secretary of the Treasury from among the officers and employees of the Department of the Treasury.

(B) One director shall be appointed by the Federal Reserve Board from among the officers and employees of the Federal Reserve Board.

(C) Five directors shall be appointed by the President, by and with the advice and consent of the Senate, as follows—

(i) three such directors shall be selected from among persons who are associated with, and representative of different aspects of, the securities industry, not all of whom shall be from the same geographical area of the United States, and

(ii) two such directors shall be selected from the general public from among persons who are not associated with any broker or dealer, within the meaning of paragraph (18) of section 3(a) of the 1934 Act, or similarly associated with a national securities exchange or other securities industry group and who have not had any such association during the two years preceding appointment.

(3) CHAIRMAN AND VICE CHAIRMAN.—The President shall designate a Chairman and Vice Chairman from among those directors appointed under paragraph (2)(C)(ii) of this subsection.

(4) TERMS.—

(A) Except as provided in subparagraphs (B) and (C), each director shall be appointed for a term of three years.

(B) Of the directors first appointed under paragraph (2)—

(i) two shall hold office for a term expiring on December 31, 1971,

(ii) two shall hold office for a term expiring on December 31, 1972, and

(iii) three shall hold office for a term expiring on December 31, 1973,

as designated by the President at the time they take office. Such designation shall be made in a manner which will assure that no two persons appointed under the authority of the same clause of paragraph (2)(C) shall have terms which expire simultaneously.

(C) A vacancy in the Board shall be filled in the same manner as the original appointment was made. Any director appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A director may serve after the expiration of his term until his successor has taken office.

(5) COMPENSATION, ETC.—All matters relating to compensation of directors and the determination of dollar volume of trading on exchanges shall be as provided in the bylaws of SIPC.

(d) MEETINGS OF BOARD.—The Board of Directors shall meet at the call of its Chairman, or as otherwise provided by the bylaws of SIPC.

(e) BYLAWS.—

(1) As soon as practicable but not later than forty-five days after the date of enactment of this Act, the Board of Directors shall adopt initial bylaws and rules relating to the conduct of the business of SIPC and the exercise of the rights and powers granted to it by this Act, and shall file a copy thereof with the Commission. Thereafter, the Board of Directors may alter, supplement, or repeal any existing

bylaw or rule and may adopt additional bylaws and rules, and in each such case shall file a copy thereof with the Commission.

(2) Each such initial bylaw or rule, alteration, supplement, or repeal, and additional bylaw or rule shall take effect upon the thirtieth day (or such later date as SIPC may designate) after the filing of the copy thereof with the Commission or upon such earlier date as the Commission may determine, unless the Commission shall, by notice to SIPC setting forth the reasons therefor, disapprove the same, in whole or in part, as being contrary to the public interest or contrary to the purposes of this Act.

(3) The Commission may, by such rules or regulations as it determines to be necessary or appropriate in the public interest or to effectuate the purposes of this Act, require the adoption, amendment, alteration of, supplement to or rescission of any bylaw or rule by SIPC, whenever adopted.

(f) *OTHER MEMBERS.*—

(1) Any person who is a broker, dealer, or member of a national securities exchange and who is excluded from membership in SIPC under subsection (a) may become a member of SIPC under such conditions and upon such terms as SIPC shall require.

(2) Notwithstanding anything contained in subsections (c) and (d) of section 4, any person who becomes a member of the corporation under this subsection shall be subject to such assessments as SIPC determines to be equitable.

SEC. 4. SIPC FUND.

(a) *IN GENERAL.*—

(1) *ESTABLISHMENT OF FUND.*—SIPC shall establish a “SIPC Fund” (hereinafter in this Act referred to as the “fund”). All amounts received by SIPC (other than amounts paid directly to any lender pursuant to any pledge securing a borrowing by SIPC) shall be deposited in the fund, and all expenditures made by SIPC shall be made out of the fund.

(2) *BALANCE OF THE FUND.*—The balance of the fund at any time shall consist of the aggregate at such time of the following items:

(A) Cash on hand or on deposit.

(B) Amounts invested in United States Government or agency securities.

(C) Confirmed lines of credit.

(3) *CONFIRMED LINES OF CREDIT.*—For purposes of this section, the amount of confirmed lines of credit as of any time is the aggregate amount which SIPC at such time has the right to borrow from banks and other financial institutions under confirmed lines of credit or other written agreements which provide that moneys so borrowed are to be repayable by SIPC not less than one year from the time of such borrowings (including, for purposes of determining when such moneys are repayable, all rights of extension, refunding, or renewal at the election of SIPC).

(b) *INITIAL REQUIRED BALANCE FOR FUND.*—Within one hundred and twenty days from the date of enactment of this Act, the balance of the fund shall aggregate not less than \$75,000,000, less any amounts expended from the fund within that period.

(c) ASSESSMENTS.—

(1) *INITIAL ASSESSMENTS.*—Each member of SIPC shall pay to SIPC, or the collection agent for SIPC specified in section 9(a), on or before the one hundred and twentieth day following the date of enactment of this Act, an assessment equal to one-eighth of 1 per centum of the gross revenues from the securities business of such member during the calendar year 1969, or if the Commission shall determine that, for purposes of assessment pursuant to this paragraph, a lesser percentage of gross revenues from the securities business is appropriate for any class or classes of members (taking into account relevant factors, including but not limited to types of business done and nature of securities sold), such lesser percentages as the Commission, by rule or regulation, shall establish for such class or classes, but in no event less than one-sixteenth of 1 per centum for any such class. In no event shall any assessment upon a member pursuant to this paragraph be less than \$150.

(2) *GENERAL ASSESSMENT AUTHORITY.*—SIPC shall, by bylaw or rule, impose upon its members such assessments as, after consultation with self-regulatory organizations, SIPC may deem necessary and appropriate to establish and maintain the fund and to repay any borrowings by SIPC. Any assessments so made shall be in conformity with contractual obligations made by SIPC in connection with any borrowing incurred by SIPC. Subject to paragraph (3) and subsection (d)(1)(A), any such assessment upon the members, or any one or more classes thereof, may, in whole or in part, be based upon or measured by (A) the amount of their gross revenues from the securities business, or (B) all or any of the following factors: the amount or composition of their gross revenues from the securities business, the number or dollar volume of transactions effected by them, the number of customer accounts maintained by them or the amounts of cash and securities in such accounts, their net capital, the nature of their activities (whether in the securities business or otherwise) and the consequent risks, or other relevant factors.

(3) *LIMITATIONS.*—Notwithstanding any other provision of this Act (other than section 3(f))—

(A) no assessment shall be made upon a member otherwise than pursuant to paragraph (1) or (2) of this subsection,

(B) an assessment may be made under paragraph (2) of this subsection at a rate in excess of one half of one per centum during any twelve-month period if SIPC determines, in accordance with a bylaw or rule, that such rate of assessment during such period will not have a material adverse effect on the financial condition of its members or their customers, except that no assessments shall be made pursuant to such paragraph upon a member which require payments during any such period which exceed in the aggregate one per centum of such member's gross revenues from the securities business for such period, and

(C) no assessment shall include any charge based upon the member's activities (i) in the distribution of shares of registered open end investment companies or unit investment trusts, (ii) in the sale of variable annuities, (iii) in the business of insurance, or (iv) in the business of rendering investment advisory services to one or more registered investment companies or insurance company separate accounts.

(d) REQUIREMENTS RESPECTING ASSESSMENTS AND LINES OF CREDIT.—

(1) ASSESSMENTS.—

(A) $\frac{1}{2}$ OF 1 PERCENT ASSESSMENT.—Subject to subsection (c)(3), SIPC shall impose upon each of its members an assessment at a rate of not less than one-half of 1 per centum per annum of the gross revenues from the securities business of such member—

(i) until the balance of the fund aggregates not less than \$150,000,000 (or such other amount as the Commission may determine in the public interest),

(ii) during any period when there is outstanding borrowing by SIPC pursuant to subsection (f) or subsection (g) of this section, and

(iii) whenever the balance of the fund (exclusive of confirmed lines of credit) is below \$100,000,000 (or such other amount as the Commission may determine in the public interest).

(B) $\frac{1}{4}$ OF 1 PERCENT ASSESSMENT.—During any period during which—

(i) the balance of the fund (exclusive of confirmed lines of credit) aggregates less than \$150,000,000 (or such other amount as the Commission has determined under paragraph (2)(B)), or

(ii) SIPC is required under paragraph (2)(B) to phase out of the fund all confirmed lines of credit,

SIPC shall endeavor to make assessments in such a manner that the aggregate assessments payable by its members during such period shall not be less than one-fourth of 1 per centum per annum of the aggregate gross revenues from the securities business for such members during such period.

(2) LINES OF CREDIT.—

(A) \$50,000,000 LIMIT AFTER 1973.—After December 31, 1973, confirmed lines of credit shall not constitute more than \$50,000,000 of the balance of the fund.

(B) PHASEOUT REQUIREMENT.—When the balance of the fund aggregates \$150,000,000 (or such other amount as the Commission may determine in the public interest) SIPC shall phase out of the fund all confirmed lines of credit.

(e) PRIOR TRUSTS; OVERPAYMENTS AND UNDERPAYMENTS.—

(1) PRIOR TRUSTS.—There may be contributed and transferred at any time to SIPC any funds held by any trust established by a self-regulatory organization prior to January 1, 1970, and the amounts so contributed and transferred shall be applied, as may be determined by SIPC with approval of the Commission, as a reduction in the amounts payable pursuant to assessments made or to be made by SIPC upon members of such self-regulatory organization pursuant to subsection (c)(2). No such reduction shall be made at any time when there is outstanding any borrowing by SIPC pursuant to subsection (g) of this section or any borrowings under confirmed lines of credit.

(2) OVERPAYMENTS.—To the extent that any payment by a member exceeds the maximum rate permitted by subsection (c) of this

section, the excess shall not be recoverable except against future payments by such member in accordance with a bylaw or rule of SIPC.

(3) **UNDERPAYMENTS.**—If a member fails to pay when due all or any part of an assessment made upon such member, the unpaid portion thereof shall bear interest at such rate as may be determined by SIPC by bylaw or rule.

(f) **BORROWING AUTHORITY.**—SIPC shall have the power to borrow moneys and to evidence such borrowed moneys by the issuance of bonds, notes, or other evidences of indebtedness, all upon such terms and conditions as the Board of Directors may determine in the case of a borrowing other than pursuant to subsection (g) of this section, or as may be prescribed by the Commission in the case of a borrowing pursuant to subsection (g). The interest payable on a borrowing pursuant to subsection (g) shall be equal to the interest payable on the related notes or other obligations issued by the Commission to the Secretary of the Treasury. To secure the payment of the principal of, and interest and premium, if any, on, all bonds, notes, or other evidences of indebtedness so issued, SIPC may make agreements with respect to the amount of future assessments to be made upon members and may pledge all or any part of the assets of SIPC and of the assessments made or to be made upon members. Any such pledge of future assessments shall (subject to any prior pledge) be valid and binding from the time that it is made, and the assessments so pledged and thereafter received by SIPC, or any examining authority as collection agent for SIPC, shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding against all parties having claims of any kind against SIPC or such collection agent whether pursuant to this Act, in tort, contract or otherwise, irrespective of whether such parties have notice thereof. During any period when a borrowing by SIPC pursuant to subsection (g) of this section is outstanding, no pledge of any assessment upon a member to secure any bonds, notes, or other evidences of indebtedness issued other than pursuant to subsection (g) of this section shall be effective as to the excess of the payments under the assessment on such member during any twelve-month period over one-fourth of 1 per centum of such member's gross revenues from the securities business for such period. Neither the instrument by which a pledge is authorized or created, nor any statement or other document relative thereto, need be filed or recorded in any State or other jurisdiction. The Commission may by rule or regulation provide for the filing of any instrument by which a pledge or borrowing is authorized or created, but the failure to make or any defect in any such filing shall not affect the validity of such pledge or borrowing.

(g) **SEC LOANS TO SIPC.**—In the event that the fund is or may reasonably appear to be insufficient for the purposes of this Act, the Commission is authorized to make loans to SIPC. At the time of application for, and as a condition to, any such loan, SIPC shall file with the Commission a statement with respect to the anticipated use of the proceeds of the loan. If the Commission determines that such loan is necessary for the protection of customers of brokers or dealers and the maintenance of confidence in the United States securities markets and that SIPC has submitted a plan which provides as reasonable an assurance of prompt repayment as may be feasible under the circumstances, then the Commission shall so certify to the Secretary of the Treasury, and issue notes or other obligations to the Secretary of the Treasury pursuant to subsection

(h). If the Commission determines that the amount or time for payment of the assessments pursuant to such plan would not satisfactorily provide for the repayment of such loan, it may, by rules and regulations, impose upon the purchasers of equity securities in transactions on national securities exchanges and in the over-the-counter markets a transaction fee in such amount as at any time or from time to time it may determine to be appropriate, but not exceeding one-fiftieth of 1 per centum of the purchase price of the securities. No such fee shall be imposed on a transaction (as defined by rules or regulations of the Commission) of less than \$5,000. For the purposes of the next preceding sentence, (A) the fee shall be based upon the total dollar amount of each purchase; (B) the fee shall not apply to any purchase on a national securities exchange or in an over-the-counter market by or for the account of a broker or dealer registered under section 15(b) of the 1934 Act or a member of a national securities exchange unless such purchase is for an investment account of such broker, dealer, or member (and for this purpose any transfer from a trading account to an investment account shall be deemed a purchase at fair market value); and (C) the Commission by rules and regulations may exempt any transaction in the over-the-counter markets in order to provide for the assessment of fees on purchasers in transactions in those markets on a basis comparable to the assessment of fees on purchasers in transactions on national securities exchanges. Such fee shall be collected by the broker or dealer effecting the transaction for or with the purchaser and shall be paid to SIPC in the same manner as assessments imposed pursuant to subsection (c).

(h) SEC NOTES ISSUED TO TREASURY.—To enable the Commission to make loans under subsection (g), the Commission is authorized to issue to the Secretary of the Treasury notes or other obligations in an aggregate amount of not to exceed \$1,000,000,000, in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury may reduce the interest rate if he determines such reduction to be in the national interest. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act, as amended, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(i) "GROSS REVENUES" DEFINED.—

(1) IN GENERAL.—For purposes of this Act, the term "gross revenues from the securities business" means the sum of (but without duplication):

(A) commissions earned in connection with transactions in securities effected for customers as agent (net of commissions

paid to other brokers and dealers in connection with such transactions) and markups in respect of purchases or sales of securities as principal,

(B) charges for executing or clearing transactions in securities for other brokers and dealers,

(C) the net realized gain if any, from principal transactions in securities in trading accounts,

(D) the net profit, if any, from the management of or participation in the underwriting or distribution of securities,

(E) interest earned on customers' securities accounts,

(F) fees for investment advisory services (except when rendered to one or more registered investment companies or insurance company separate accounts) or account supervision in respect of securities,

(G) fees for the solicitation of proxies with respect to, or tender or exchanges of, securities,

(H) income from service charges or other surcharges in respect of securities,

(I) except as otherwise provided by rule or regulation of the Commission, dividends and interest received on securities in investment accounts of the broker or dealer,

(J) fees in connection with put, call, and other option transactions in securities, and

(K) fees and other income for all other investment banking services.

Such term does not include revenues received by a broker or dealer in connection with the distribution of shares of a registered open end investment company or unit investment trust or revenues derived by a broker or dealer from the sale of variable annuities or from the conduct of the business of insurance.

(2) **CONSOLIDATED GROUP.**—Except as otherwise provided by SIPC by bylaw or rule, gross revenues from the securities business of a broker or dealer shall be computed on a consolidated basis for such broker or dealer and all its subsidiaries, and the operations of a broker or dealer shall include those of any business to which such broker or dealer has succeeded.

(3) **MEANING OF TERMS NOT DEFINED.**—SIPC may by bylaw or rule define all terms used in this subsection insofar as such definitions are not inconsistent with the provisions of this subsection.

SEC. 5. PROTECTION OF CUSTOMERS.

(a) **DETERMINATION OF NEED OF PROTECTION.**—

(1) **NOTICE TO SIPC.**—If the Commission or any self-regulatory organization is aware of facts which lead it to believe that any broker or dealer subject to its regulation is in or is approaching financial difficulty, it shall immediately notify SIPC, and, if such notification is by a self-regulatory organization, the Commission.

(2) **ACTION BY SIPC.**—If SIPC determines that any member has failed or is in danger of failing to meet its obligations to customers and that there exists one or more of the conditions specified in subsection (b)(1)(A), SIPC, upon notice to such member, may apply to any court of competent jurisdiction specified in section 27 or 21(e)

of the 1934 Act for a decree adjudicating that customers of such member are in need of the protection provided by this Act.

(3) *EFFECT OF OTHER PENDING ACTIONS.*—An application under paragraph (2)—

(A) with the consent of the Commission, may be combined with any action brought by the Commission including an action by it for a temporary receiver pending an appointment of a trustee under subsection (b)(3), and

(B) may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding or any proceeding to reorganize, conserve, or liquidate such member or its property, or any proceeding to enforce a lien against property of such member.

(b) *COURT ACTION.*—

(1) *ISSUANCE OF DECREE.*—

(A) *FINDINGS BY COURT.*—A court to which application is made pursuant to subsection (a)(2) shall grant the application and issue a decree adjudicating that customers of the member named in the application are in need of protection under this Act if it finds that such member—

(i) is insolvent within the meaning of section 1(19) of the Bankruptcy Act, or is unable to meet its obligations as they mature, or

(ii) has committed an act of bankruptcy within the meaning of section 3 of the Bankruptcy Act, or

(iii) is the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such member has been appointed, or

(iv) is not in compliance with applicable requirements under the 1934 Act or rules or regulations of the Commission or any self-regulatory organization with respect to financial responsibility or hypothecation of customers' securities, or

(v) is unable to make such computations as may be necessary to establish compliance with such financial responsibility or hypothecation rules or regulations.

(B) *UNCONTESTED, ETC., APPLICATIONS.*—If within three business days after the filing of an application pursuant to subsection (a)(2), or such other period as the court may order, the debtor shall consent to or fail to contest such application or shall fail to show facts sufficient to controvert any material allegation of such application, the court shall forthwith grant the application and issue a decree adjudicating that customers of the member named in the application are in need of protection under this Act.

(2) *EXCLUSIVE JURISDICTION OVER DEBTOR.*—Upon the filing of an application pursuant to subsection (a)(2), the court to which application is made shall have exclusive jurisdiction of the debtor involved and its property wherever located with the powers, to the extent consistent with the purposes of this Act, of a court of bankruptcy and of a court in a proceeding under chapter X of the Bankruptcy Act. Pending an adjudication under paragraph (1) such court shall

stay, and upon appointment by it of a trustee as provided in paragraph (3) such court shall continue the stay of, any pending bankruptcy, mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the debtor or its property and any other suit against any receiver, conservator, or trustee of the debtor or its property. Pending such adjudication and upon the appointment by it of such trustee, the court may stay any proceeding to enforce a lien against property of the debtor or any other suit against the debtor. Pending such adjudication, such court may appoint a temporary receiver.

(3) **APPOINTMENT OF TRUSTEE.**—If the court grants an application and makes an adjudication under paragraph (1), the court shall forthwith appoint as trustee for the liquidation of the business of the debtor in accordance with section 6, and as attorney for such trustee, such persons as SIPC shall specify. No person shall be appointed as such trustee or attorney if such person is not “disinterested” within the meaning of section 158 of the Bankruptcy Act.

(4) **DEBTOR AND FILING DATE DEFINED.**—For purposes of this Act—

(A) **DEBTOR.**—The term “debtor” means a member of SIPC in respect of whom an application has been filed pursuant to subsection (a)(2).

(B) **FILING DATE.**—The term “filing date” means the date on which an application with respect to any debtor is filed under subsection (a)(2); except that if—

(i) a petition was filed before such date by or against the debtor under the Bankruptcy Act, or

(ii) the debtor is the subject of a proceeding pending in any court or before any agency of the United States or any State in which a receiver, trustee, or liquidator for such debtor was appointed which proceeding was commenced before the date on which such application was filed,

then the term “filing date” means the date on which such petition was filed or such proceeding commenced.

(c) **SEC PARTICIPATION IN PROCEEDINGS.**—The Commission may, on its own motion, file notice of its appearance in any proceeding under this Act and may thereafter participate as a party.

SEC. 6. LIQUIDATION PROCEEDINGS.

(a) **GENERAL PURPOSES OF LIQUIDATION PROCEEDING.**—The purposes of any proceeding in which a trustee has been appointed under section 5(b)(3) (hereafter in this section referred to as a “liquidation proceeding”) shall be:

(1) as promptly as possible after such appointment and in accordance with the provisions of this section—

(A) to return specifically identifiable property to the customers of the debtor entitled thereto;

(B) to distribute the single and separate fund, and (in advance thereof or concurrently therewith) pay to customers moneys advanced by SIPC, as provided in subsection (f);

(2) to operate the business of the debtor in order to complete open contractual commitments of the debtor pursuant to subsection (d);

- (3) to enforce rights of subrogation as provided in this Act; and
- (4) to liquidate the business of the debtor.

(b) *POWERS AND DUTIES OF TRUSTEE.*—

(1) *TRUSTEE POWERS.*—A trustee appointed under section 5(b)(3) (hereinafter referred to as “trustee”) shall be vested with the same powers and title with respect to the debtor and the property of the debtor, and the same rights to avoid preferences, as a trustee in bankruptcy and a trustee under chapter X of the Bankruptcy Act have respect to a bankrupt and a chapter X debtor. In addition, a trustee shall have the right—

(A) with the approval of SIPC, to hire and fix the compensation of all personnel (including officers and employees of the debtor and of its examining authority) and other persons (including but not limited to accountants) that are deemed by such trustee necessary for all or any purposes of the liquidation proceeding; and

(B) to operate the business of the debtor in order to complete open contractual commitments pursuant to subsection (d), and no approval of the court shall be required therefor.

(2) *TRUSTEE DUTIES.*—Except as inconsistent with the provisions of this Act or otherwise ordered by the court, a trustee shall be subject to the same duties as a trustee appointed under section 44 of the Bankruptcy Act, except that a trustee may, but shall have no duty to, reduce to money any securities in the single and separate fund (provided under subsection (c)(2)(B)) or in the general estate of the debtor.

(c) *APPLICATION OF BANKRUPTCY ACT.*—

(1) *GENERAL PROVISIONS APPLICABLE.*—Except as inconsistent with the provisions of this Act and except that in no event shall a plan of reorganization be formulated, a liquidation proceeding shall be conducted in accordance with, and as though it were being conducted under, the provisions of chapter X and such of the provisions (other than section 60e) of chapters I to VII, inclusive, of the Bankruptcy Act as section 102 of chapter X would make applicable if an order of the court had been entered directing that bankruptcy be proceeded with pursuant to the provisions of such chapters I to VII, inclusive; except that the court may, for such period as may be appropriate, stay enforcement of, but shall not abrogate, the rights provided in section 68 of the Bankruptcy Act and the right to enforce a valid, non-preferential lien or pledge against the property of the debtor. For purposes of applying the Bankruptcy Act in carrying out this section, any reference in the Bankruptcy Act to the date of commencement of proceedings under the Bankruptcy Act shall be deemed to be a reference to the filing date (as defined in section 5(b)(4)(B)).

(2) *SPECIAL PROVISIONS.*—The following subparagraphs of this paragraph shall apply to a liquidation proceeding in lieu of section 60e of the Bankruptcy Act:

(A) *DEFINITIONS.*—Except as otherwise expressly provided in this section, for purposes of this section and the application of the Bankruptcy Act to a liquidation proceeding—

(i) “property” includes cash and securities, whether or not negotiable and all property of a similar character;

(ii) "customers" if a debtor means persons (including persons with whom the debtor deals as principal or agent) who have claims on account of securities received, acquired, or held by the debtor from or for the account of such persons (I) for safekeeping, or (II) with a view to sale, or (III) to cover consummated sales, or (IV) pursuant to purchases, or (V) as collateral security, or (VI) by way of loans of securities by such persons to the debtor, and shall include persons who have claims against the debtor arising out of sales or conversions of such securities, and shall include any person who has deposited cash with the debtor for the purpose of purchasing securities, but shall not include any person to the extent that such person has a claim for property which by contract, agreement, or understanding, or by operation of law, is part of the capital of the debtor or is subordinated to the claims of creditors of the debtor;

(iii) "cash customer" means, with respect to any securities or cash, customers entitled to immediate possession of such securities or cash without the payment of any sum to the debtor, and for purposes of this clause, the same person may be a cash customer with reference to certain securities or cash and not a cash customer with reference to other securities or cash;

(iv) "net equity" of a customer's account or accounts means the dollar amount thereof determined by giving effect to open contractual commitments completed as provided in subsection (d), by excluding any specifically identifiable property reclaimable by the customer, and by subtracting the indebtedness, if any, of the customer to the debtor from the sum which would have been owing by the debtor to the customer had the debtor liquidated, by sale or purchase on the filing date, all other securities and contractual commitments of the customer, and for purposes of this definition, accounts held by a customer in separate capacities shall be deemed to be accounts of separate customers; and

(v) "securities" has the same meaning as such term has under section 60e of the Bankruptcy Act.

(B) SINGLE AND SEPARATE FUND.—All property at any time received, acquired, or held by or for the account of a debtor from or for the account of customers except cash customers who are able to identify specifically their property in the manner prescribed in subparagraph (C), and the proceeds of all customers' property transferred by the debtor, including property unlawfully converted, shall constitute a single and separate fund; and all customers except such cash customers shall constitute a single and separate class of creditors, entitled to share ratably in such fund on the basis of their respective net equities as of the filing date and in priority to all other payments, except that (i) there shall be repaid to SIPC, in priority to all other claims payable from such single and separate fund, the amount of all advances made by SIPC to the trustee to permit the completion of open contractual commitments pursuant to subsection (d),

and (ii) to the extent that any other assets of the debtor may be available therefor or as otherwise ordered by the court, all costs and expenses specified in clauses (1) and (2) of section 64a of the Bankruptcy Act shall be paid from such single and separate fund in priority to the claims of such single and separate class of creditors, any moneys advanced by SIPC for such costs and expenses shall be recouped as such. If such single and separate fund shall not be sufficient to pay in full the claims of such single and separate class of creditors, the creditors of such class shall, be entitled, to the extent only of their respective unpaid balances, to share in the general estate with general creditors. In, or for the purpose of, distributing such fund, all property other than cash shall be valued as of the close of business on the filing date. To the greatest extent considered practicable by the trustee, the trustee shall deliver in payment of claims of customers for their net equities based upon securities held on the filing date in their accounts (after giving effect to open contractual commitments completed as hereinafter provided), securities of the same class and series of an issuer ratably up to the respective amounts which were so held in such accounts. Any property remaining after the liquidation of a lien or pledge made by a debtor shall be apportioned between his general estate and the single and separate fund in the proportion in which the general property of the debtor and the property of his customers contributed to such lien or pledge.

(C) SPECIFICALLY IDENTIFIABLE PROPERTY.—The trustee shall return specifically identifiable property to the customers of the debtor entitled thereto. No cash or securities at any time received, acquired, or held by or for the account of a debtor from or for the accounts of customers shall for the purposes of this paragraph be deemed to be specifically identified, unless such property remained in its identical form in the debtor's possession until the filing date, or unless such property was allocated to or physically set aside for such customers on the filing date. In determining whether property was allocated to or physically set aside for such customers, it shall be sufficient that on the filing date:

(i) securities are segregated individually, or in bulk for customers collectively;

(ii) in the case of securities held for the account of the debtor as part of any central certificate service of any clearing corporation or any similar depository—

(I) the records of the debtor show or there is otherwise established to the satisfaction of the trustee that all or a specified part of the securities held by such clearing corporation or other similar depository are held for specified customers, or for customers collectively, and

(II) such records of the debtor also show or there is otherwise established to the satisfaction of the trustee the identities of the particular customers entitled to receive specified numbers or units of such securities so held for customers collectively; or

(iii) such property is held for the account of customers of the debtor in such other manner as the Commission, for the protection of customers and other creditors on a fair and equitable basis, by rule or regulation shall have determined to be sufficiently identifiable as the property of such customers.

If there is any shortage in securities of the same class and series of an issuer so segregated in bulk or otherwise held for customers pursuant to this subparagraph, as compared to the aggregate rights of particular customers to receive securities of such class and series, the respective interests of such customers in such securities of such class and series shall be prorated, without prejudice, however, to the satisfaction of any claim for deficiencies as otherwise provided in this section.

(D) Where such single and separate fund is not sufficient to pay in full the claims of such single and separate class of creditors, a transfer by a debtor of any property which, except for such transfer, would have been a part of such fund may be recovered by the trustee for the benefit of such fund, if such transfer is voidable or void under the provisions of the Bankruptcy Act. For the purpose of such recovery, the property so transferred shall be deemed to have been the property of the debtor and, if such transfer was made to a customer or for his benefit, such customer shall be deemed to have been a creditor, the laws of any State to the contrary notwithstanding. Subject to the provisions of paragraph (D), if any securities received or acquired by a debtor from a cash customer are transferred by the debtor, such customer shall not have any specific interest in or specific right to any securities of like kind on hand on the filing date, but such securities of like kind or the proceeds thereof shall become part of such single and separate fund.

(d) COMPLETION OF OPEN CONTRACTUAL COMMITMENTS.—The trustee shall complete those contractual commitments of the debtor relating to transactions in securities which were made in the ordinary course of debtor's business and which were outstanding on the filing date—

(1) in which a customer had an interest, except those commitments the completion of which the Commission shall have determined by rule or regulation not to be in the public interest, or

(2) in which a customer did not have an interest, to the extent that the Commission shall by rule or regulation have determined the completion of such commitments to be in the public interest.

For purposes of this subsection (but not for any other purpose of this Act) (i) the term "customer" means any person other than a broker or dealer, and (ii) a customer shall be deemed to have had an interest in a transaction if a broker participating in the transaction was acting as agent for a customer, or if a dealer participating in the transaction held a customer's order which was to be executed as a part of the transaction. All property at any time received, acquired, or held by or for the account of the debtor (except for cash or securities that are specifically identifiable as the property of particular customers and are not the subject of an open contractual commitment), and all property in the single and separate fund, shall be available to complete open contractual commitment pursuant to this subsection. Securities purchased or cash received by the trustee upon

completion of any such commitment shall constitute specifically identifiable property of a customer to the extent that such commitment was completed with property which constituted specifically identifiable property of such customer on the filing date, or was paid or delivered by or for the account of such customer to the debtor or the trustee after the filing date.

(e) NOTICE.—Promptly after his appointment, the trustee shall cause notice of the commencement of proceedings under this section to be published in accordance with a designation of the court, made in accordance with the requirements of section 28 of the Bankruptcy Act, and at the same time shall cause to be mailed a copy of such notice to each of the customers of the debtor as their addresses shall appear from the debtor's books and records. Except as the trustee may otherwise permit, claims for specifically identifiable property (other than securities registered in the name of the claimant or segregated for him in his individual name) or claims payable from property in the single and separate fund or payable with moneys advanced by SIPC, shall not be paid other than from the general estate of the debtor unless filed within such period of time (not exceeding sixty days after such publication) as may be fixed by the court, and no claim shall be allowed after the time specified in section 57 of the Bankruptcy Act. Subject to the foregoing, and without limiting the powers and duties of the trustee to discharge promptly obligations as specified in this section, the court may make appropriate provision for proof and enforcement of all claims against the debtor including those of any subrogee.

(f) SIPC ADVANCES TO TRUSTEE.—

(1) ADVANCES FOR CUSTOMERS CLAIMS.—In order to provide for prompt payment and satisfaction of the net equities of customers of debtor, SIPC shall advance to the trustee such moneys as may be required to pay or otherwise satisfy claims in full of each customer, but not to exceed \$50,000 for such customer; except that—

(A) insofar as all or any portion of the net equity of a customer is a claim for cash, as distinct from securities, the amount advanced by reason of such claim to cash shall not exceed \$20,000;

(B) a customer who holds accounts with the debtor in separate capacities shall be deemed to be a different customer in each capacity;

(C) no such advance shall be made by SIPC to the trustee to pay or otherwise satisfy, directly or indirectly, any claims of any customer who is a general partner, officer, or director of the debtor, the beneficial owner of 5 per centum or more of any class of equity security of the debtor (other than a nonconvertible stock having fixed preferential dividend and liquidation rights) or limited partner with a participation of 5 per centum or more in the net assets or net profits of the debtor; and

(D) no such advance shall be made by SIPC to the trustee to pay or otherwise satisfy claims of any customer who is a broker or dealer or bank other than to the extent that it shall be established to the satisfaction of the trustee, from the books and records of the debtor or from the books and records of a broker or dealer or bank or otherwise, that claims of such broker or dealer or bank against the debtor arise out of transactions for customers of such broker or dealer or bank, in which event, each such customer of such

broker or dealer or bank shall be deemed a separate customer of the debtor.

To the extent that moneys are advanced by SIPC to the trustee to pay the claims of customers, SIPC shall be subrogated to the claims of such customers with the rights and priorities provided in this section.

(2) *OTHER ADVANCES.*—SIPC may advance to the trustee such moneys as may be required to effectuate subsection (b)(1)(A). SIPC shall advance to the trustee such moneys as (with those available pursuant to subsection (d) may be required to effectuate subsection (d).

(g) *PAYMENTS TO CUSTOMERS; NO PROOF OF CLAIM REQUIRED.*—It shall be the duty of the Trustee to discharge promptly, in accordance with the provisions of this section, all obligations of the debtor to each of its customers relating to, or net equities based upon, securities or cash by the delivery of securities or the effecting of payments to such customer (subject to subsection (f)(1), to the extent that such payments are made out of advances from SIPC under such subsection) insofar as such obligations are ascertainable from the books and records of the debtor or are otherwise established to the satisfaction of the trustee, whether or not such customer shall have filed formal proof of such claim. For that purpose the court among other things shall—

(1) in respect of claims relating to securities or cash, authorize the trustee to make payment out of moneys made available to the trustee by SIPC notwithstanding the fact that there shall not have been any showing or determination that there are sufficient funds of the debtor available to make such payment; and

(2) in respect of claims relating to, or net equities based upon, securities of a class and series of an issuer, which are ascertainable from the books and records of the debtor or are otherwise established to the satisfaction of the trustee, authorize the trustee to deliver securities of such class and series if and to the extent available to satisfy such claims in whole or in part, with partial deliveries to be made pro rata to the greatest extent considered practicable by the trustee.

Any payment or delivery of property pursuant to this subsection may be conditioned upon the trustee requiring claimants to execute in a form to be determined by the trustee, appropriate receipts⁷ supporting affidavits, and assignments, but shall be without prejudice to the right of any claimant to file formal proof of claim within the period specified in subsection (e) for any balance of securities or cash to which he may deem himself entitled.

(h) *PROOF OF CLAIM BY ASSOCIATES AND OTHERS.*—The provisions of this section permitting discharge of obligations of the debtor to pay cash or to deliver securities without formal proof of claim shall not apply to any person "associated" with the debtor as defined in section 3(a)(18) of the 1934 Act, to any beneficial owner of 5 per centum or more of the voting stock of the debtor, or to any member of the immediate family of any of the foregoing.

(i) *REPORTS BY TRUSTEE TO COURT.*—All reports to the court by a trustee (other than reports required to be filed pursuant to section 167(3) of the Bankruptcy Act) shall be in such form and detail as, having due regard to the requirements of section 17 of the 1934 Act and the rules and regulations thereunder and the magnitude of items and transactions involved in connection with the operations of a broker or dealer, the Com-

mission shall determine by rules and regulations to present fairly the results of such proceeding as at the dates or for the periods covered by such reports.

(j) *EFFECT OF ACT ON CLAIMS.*—Except as otherwise provided in this section, nothing in this section shall limit the right of any person to establish by formal proof such claims as such person may have to payment, or to delivery of specific securities, without resort to moneys advanced by SIPC to the trustees.

SEC. 7. SEC FUNCTIONS.

(a) *ADMINISTRATIVE PROCEDURE.*—Determinations of the Commission, for purposes of making rules or regulations pursuant to section 3(e) and section 9(f) shall be after appropriate notice and opportunity for a hearing, and for submission of views of interested persons, in accordance with the rulemaking procedures specified in section 553 of title 5, United States Code, but the holding of a hearing shall not prevent adoption of any such rule or regulation upon expiration of the notice period specified in subsection (d) of such section and shall not be required to be on a record within the meaning of subchapter II of chapter 5 of such title.

(b) *ENFORCEMENT OF ACTIONS.*—In the event of the refusal of SIPC to commit its funds or otherwise to act for the protection of customers of any member of SIPC, the Commission may apply to the district court of the United States in which the principal office of SIPC is located for an order requiring SIPC to discharge its obligations under this Act and for such other relief as the court may deem appropriate to carry out the purposes of this Act.

(c) *EXAMINATIONS AND REPORTS.*—

(1) *EXAMINATION OF SIPC, ETC.*—The Commission may make such examinations and inspections of SIPC and require SIPC to furnish it with such reports and records or copies thereof as the Commission may consider necessary or appropriate in the public interest or to effectuate the purposes of this Act.

(2) *REPORTS FROM SIPC.*—As soon as practicable after the close of each fiscal year, SIPC shall submit to the Commission a written report relative to the conduct of its business, and the exercise of the other rights and powers granted by this Act, during such fiscal year. Such report shall include financial statements setting forth the financial position of SIPC at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year. The financial statements so included shall be examined by an independent public accountant or firm of independent public accountants, selected by SIPC and satisfactory to the Commission, and shall be accompanied by the report thereon of such accountant or firm. The Commission shall transmit such report to the President and the Congress with such comment thereon as the Commission may deem appropriate.

(d) *FINANCIAL RESPONSIBILITY.*—Section 15(c)(3) of the Securities Exchange Act of 1934 is amended to read as follows:

“(3) No broker or dealer shall make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers’ acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public

interest or for the protection of investors to provide safeguards with respect to the financial responsibility and related practices of brokers and dealers including, but not limited to, the acceptance of custody and use of customers' securities, and the carrying and use of customers' deposits or credit balances. Such rules and regulations shall require the maintenance of reserves with respect to customers' deposits or credit balances, as determined by such rules and regulations."

SEC. 8. EXAMINING AUTHORITY FUNCTIONS.

Each member of SIPC shall file with such member's examining authority such information (including reports of, and information with respect to, the gross revenues from the securities business of such member, including the composition thereof, transactions in securities effected by such member, and other information with respect to such member's activities, whether in the securities business or otherwise, including customer accounts maintained, net capital employed, and activities conducted) as SIPC may determine to be necessary or appropriate for the purpose of making assessments under section 4. The examining authority shall file with SIPC all or such part of such information (and such compilations and analyses thereof) as SIPC, by bylaw or rule, shall prescribe. No application, report, or document filed pursuant to this section shall be deemed to be filed pursuant to section 18 of the 1934 Act.

SEC. 9. FUNCTIONS OF SELF-REGULATORY ORGANIZATIONS.

(a) **COLLECTING AGENT.**—Each self-regulatory organization shall act as collection agent for SIPC to collect the assessments payable by all members of SIPC for whom such self-regulatory organization is the examining authority, and members of SIPC who are not members of any self-regulatory organization shall make payment direct to SIPC. An examining authority shall be obligated to remit to SIPC assessments made under section 4 only to the extent that payments of such assessments are received by such examining authority.

(b) **IMMUNITY.**—No self-regulatory organization shall have any liability to any person for any action taken or omitted in good faith pursuant to section 5(a)(1).

(c) **INSPECTIONS.**—The self-regulatory organization of which a member of SIPC is a member shall inspect or examine such member for compliance with applicable financial responsibility rules, except that if a member of SIPC is a member of more than one self-regulatory organization, SIPC shall designate one of such self-regulatory organizations to inspect or examine such member of SIPC for compliance with applicable financial responsibility rules. Such self-regulatory organization shall be selected by SIPC on the basis of regulatory procedures employed, availability of staff, convenience of location, and such other factors as SIPC may consider appropriate for the protection of customers of its members.

(d) **REPORTS.**—There shall be filed with SIPC by the self-regulatory organizations such reports of inspections or examinations of the members of SIPC (or copies thereof) as may be designated by SIPC by bylaw or rule.

(e) **CONSULTATION.**—SIPC shall consult and cooperate with the self-regulatory organizations toward the end:

(1) that there may be developed and carried into effect procedures reasonably designed to detect approaching financial difficulty upon the part of any member of SIPC;

(2) that, as nearly as may be practicable, examinations to ascertain whether members of SIPC are in compliance with applicable financial responsibility rules will be conducted by the self-regulatory organizations under appropriate standards (both as to method and scope) and reports of such examinations will, where appropriate, be standard in form, and

(3) that, as frequently as may be practicable under the circumstances, each member of SIPC will file financial information with, and be examined by, the self-regulatory organization which is the examining authority for such member.

(f) **FINANCIAL CONDITION OF MEMBERS.**—Notwithstanding the limitations contained in sections 15A and 19 of the 1934 Act and without limiting its powers under those or other sections of the 1934 Act, the Commission may by such rules or regulations as it determines to be necessary or appropriate in the public interest and to effectuate the purposes of this Act—

(1) require any self-regulatory organization to adopt any specified alteration of or supplement to its rules, practices, and procedures with respect to the frequency and scope of inspections and examinations relating to the financial condition of members of such self-regulatory organization and the selection and qualification of examiners;

(2) require any self-regulatory organization to furnish SIPC and the Commission with reports and records or copies thereof relating to the financial condition of members of such self-regulatory organization; and

(3) require any self-regulatory organization to inspect or examine any members of such self-regulatory organization in relation to the financial condition of such members. In the case of a broker or dealer who is a member of more than one self-regulatory organization the Commission, to the extent practicable, shall avoid requiring duplication of examinations, inspections, and reports.

SEC. 10. PROHIBITED ACTS.

(a) **FAILURE TO PAY ASSESSMENT, ETC.**—If a member of SIPC shall fail to file any report or information required pursuant to this Act, or shall fail to pay when due all or any part of an assessment made upon such member pursuant to this Act, and such failure shall not have been cured, by the filing of such report of information or by the making of such payment, together with interest thereon, within five days after receipt by such member of written notice of such failure given by or on behalf of SIPC, it shall be unlawful for such member, unless specifically authorized by the Commission, to engage in business as a broker or dealer. If such member denies that he owes all or any part of the amount specified in such notice, he may after payment of the full amount so specified commence an action against SIPC in the appropriate United States district court to recover the amount he denies owing.

(b) **ENGAGING IN BUSINESS AFTER APPOINTMENT OF TRUSTEE.**—It shall be unlawful for any broker or dealer for whom a trustee has been appointed pursuant to this Act to engage thereafter in business as a broker or dealer, unless the Commission otherwise determines in the public interest. The Commission may by order bar or suspend for any period, any officer, director, general partner, owner of 10 per centum or more of the voting securities, or controlling person of any broker or dealer for whom a trustee has been appointed pursuant to this Act from being or

becoming associated with a broker or dealer, if after appropriate notice and opportunity for hearing, the Commission shall determine such bar or suspension to be in the public interest.

(c) *EMBEZZLEMENT, ETC., OF ASSETS OF SIPC.*—Whoever steals, unlawfully abstracts, unlawfully and willfully converts to his own use or to the use of another, or embezzles any of the moneys, securities, or other assets of SIPC shall be fined not more than \$50,000 or imprisoned not more than five years or both.

SEC. 11. MISCELLANEOUS PROVISIONS.

(a) *PUBLIC INSPECTION OF REPORTS.*—Any notice, report, or other document filed with SIPC pursuant to this Act shall be available for public inspection unless SIPC or the Commission shall determine that disclosure thereof is not in the public interest. Nothing herein shall act to deny documents or information to the Congress of the United States or the committees of either House having jurisdiction over financial institutions, securities regulation, or related matters under the rules of each body. Nor shall the Commission be denied any document or information which the Commission, in its judgment, needs.

(b) *APPLICATION OF ACT TO FOREIGN MEMBERS.*—Except as otherwise provided by rule or regulation of the Commission, if the head office of a member is located, and the member's principal business is conducted, outside the United States, the provisions of this Act shall apply to such member only in respect of the business of such member conducted in the United States.

(c) *LIABILITY OF MEMBERS OF SIPC.*—Except for such assessments as may be made upon such member pursuant to the provisions of section 4, no member of SIPC shall have any liability under this Act as a member of SIPC for, or in connection with, any act or omission of any other broker or dealer whether in connection with the conduct of the business or affairs of such broker or dealer or otherwise and, without limiting the generality of the foregoing, no member shall have any liability for or in respect of any indebtedness or other liability of SIPC.

(d) *LIABILITY OF SIPC AND DIRECTORS.*—Neither SIPC nor any of its Directors shall have any liability to any person for any action taken or omitted in good faith under or in connection with any matter contemplated by this Act.

(e) *ADVERTISING.*—SIPC shall by bylaw or rule prescribe the manner in which a member of SIPC may display any sign or signs (or include in any advertisement a statement) relating to the protection to customers and their accounts, or any other protections, afforded under this Act. No member may display any such sign, or include in an advertisement any such statement, except in accordance with such bylaws and rules.

(f) *SIPC EXEMPT FROM TAXATION.*—SIPC, its property, its franchise, capital, reserves, surplus, and its income, shall be exempt from all taxation now or hereafter imposed by the United States or by any State or local taxing authority, except that any real property and any tangible personal property (other than cash and securities) of SIPC shall be subject to State and local taxation to the same extent according to its value as other real and tangible personal property is taxed. Assessments made upon a member of SIPC shall constitute ordinary and necessary expenses in carrying on the business of such member for the purpose of section 162(a) of the Internal Revenue Code of 1954. The contribution and transfer to SIPC of funds or securities held by any trust established

by a national securities exchange prior to January 1, 1970, for the purpose of providing assistance to customers of members of such exchange, shall not result in any taxable gain to such trust or give rise to any taxable income to any member of SIPC under any provision of the Internal Revenue Code of 1954, nor shall such contribution or transfer, or any reduction in assessments made pursuant to this Act, in any way affect the status, as ordinary and necessary expenses under section 162(a) of the Internal Revenue Code of 1954, of any contributions made to such trust by such exchange at any time prior to such transfer. Upon dissolution of SIPC, none of its net assets shall inure to the benefit of any of its members.

(g) **SECTION 20(a) OF 1934 ACT NOT TO APPLY.**—The provisions of subsection (a) of section 20 of the 1934 Act shall not apply to any liability under or in connection with this Act.

(h) **SEC STUDY OF UNSAFE OR UNSOUND PRACTICES.**—Not later than twelve months after the date of enactment of this Act, the Commission shall compile a list of unsafe or unsound practices by members of SIPC in conducting their business and report to the Congress (1) the steps being taken under the authority of existing law to eliminate those practices and (2) recommendations concerning additional legislation which may be needed to eliminate those unsafe or unsound practices.

SEC. 12. DEFINITIONS.

For purposes of this Act:

(1) **SELF-REGULATORY ORGANIZATION.**—The term “self-regulatory organization” means a national securities exchange or a national securities association registered pursuant to subsection (b) of section 15A of the 1934 Act.

(2) **FINANCIAL RESPONSIBILITY RULES.**—The term “financial responsibility rules” means the rules and regulations pertaining to financial responsibility and related practices which are applicable to a broker or dealer, as prescribed by the Commission under subsection (c)(3) of section 15 of the 1934 Act or prescribed by a national securities exchange.

(3) **EXAMINING AUTHORITY.**—The term “examining authority” means, with respect to any member of SIPC, the self-regulatory organization which inspects or examines such member of SIPC or the Commission if such member of SIPC is not a member of any self-regulatory organization.

And the Senate agree to the same.

HARLEY O. STAGGERS,
JOHN E. MOSS,
JOHN M. MURPHY,
HASTINGS KEITH,
JAMES HARVEY,
Managers on the Part of the House.
JOHN SPARKMAN,
HARRISON A. WILLIAMS, JR.,
EDMUND S. MUSKIE,
WALLACE F. BENNETT,
JOHN G. TOWER,
BOB PACKWOOD,
Managers on the Part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 19333) to provide greater protection for customers of registered brokers and dealers and members of national securities exchanges, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The Senate amendment struck all after the enacting clause of the House bill and inserted a substitute text. The conference agreed to a substitute for both the text of the Senate amendment and the text of the House bill.

The conference substitute uses the structure and format of the House bill. Aside from technical, clerical, and minor drafting changes, the substantive differences between the bill as passed by the House and the substitute agreed to in conference are noted below.

1. *Board of Directors.*—The House bill provided for a convertible Board of Directors. The board would have had seven members—a majority of whom would have been industry representatives—until there was an application for funds from the United States Treasury. At that time the President would have been required to appoint four additional public directors so as to convert the Board into one that had a majority of public members. Under the House bill the Board of Directors would have had 4-year, staggered terms, and the Chairman would have been elected by the Board.

The conference substitute provides for a seven member Board of Directors composed as follows:

One member, designated by the Secretary of the Treasury, from the Department of the Treasury;

One member designated by the Federal Reserve Board from the Federal Reserve Board; and

Five members appointed by the President with the advice and consent of the Senate. Of these five members, three are to be persons associated with and representative of the securities industry and two are to be from the general public. The term for each director is three years, and the terms are staggered. The chairman and vice chairman are to be designated by the President from the two members selected by him from the general public.

2. *Ceiling on assessments.*—The House bill, as amended by the Interstate and Foreign Commerce Committee (the "committee") amendment on the House floor, provided for a ceiling on assessments of 1 percent of gross revenues from the securities business.

The conference substitute includes this 1 percent ceiling, but it specifies that assessments above $\frac{1}{2}$ of 1 percent should only be used in times when the financial condition of the industry is sufficiently strong to support such an increased assessment without compounding

any financial difficulties of the industry (with the increased danger to investors that that would imply). This is totally consistent with the debate on this amendment on the House floor. At that time it was stated that the committee did not intend that the Board of Directors impose an assessment above $\frac{1}{2}$ of 1 percent without regard to what the industry could properly afford. It was clearly recognized that this increased assessment should be imposed only when the conditions in the industry could economically accept an assesment above $\frac{1}{2}$ of 1 percent and if it is needed for the proper buildup and maintenance of the SIPC fund. When good times occur, the interests of the securities industry, as well as the public interest, may be well served by a higher than $\frac{1}{2}$ of 1 percent assessment.

3. *Gross revenues from the securities business.*—The House bill, in effect, exempted revenues from the sale of mutual funds, variable annuities and investment advice to registered open-end investment companies, as well as revenues from the business of insurance. In addition, it exempted commissions earned in connection with the distribution of bonds, bills and notes of the U.S. Treasury when the broker was acting as agent for the Federal Reserve Board.

The conference substitute continues the exemption for commissions on the sale of mutual funds and variable annuities; revenues for the business of insurance; and revenues derived from the rendering of investment advice, but the exemption would include advice to both open-end and closed-end registered investment companies.

The conference substitute does not include an exemption for commissions earned in the sale of U.S. Treasury securities. In initially providing for such an exemption, your committee sought to protect reporting dealers for the Federal Reserve Board from suffering competitive disadvantages with certain commercial banks which are also recognized as reporting dealers. However, it became apparent to the conferees that such relief could not be formulated without other unintended effects—notably competitive disadvantages between broker-dealers who are recognized as reporting dealers and broker-dealers who are not so recognized. The conference substitute, therefore, does not include an exemption on this subject.

The conferees attention was also directed to the section of the bill which provides that gross revenues of a broker-dealer shall be computed on a consolidated basis with the broker-dealer's subsidiaries. This is desirable in order to avoid the possibility of evasion of assessments by the use of subsidiaries. It should be clear, however, that in the case of subsidiaries, as in the case of the parent broker-dealer, gross revenues from the securities business shall include only such revenues as are defined in the bill.

In addition, both the Securities and Exchange Commission (the "Commission") and SIPC are given certain exemptive powers in view of the possibility that certain revenues will be subject to assessments when this is not equitable nor in accordance with the purposes of the Act. For example, the Commission or SIPC well might determine that it would be inequitable and not in accordance with the intended purposes of this legislation to include in the assessments levied on a parent company income that a subsidiary which is a registered investment company receives from investments which are really investments for

the benefit of its (the subsidiary's) public investors (and the income from which inures to the benefit of its public investors).

4. *Extent of customer protection.*—The House bill provided that SIPC should advance monies necessary to satisfy claims of each customer of a member-broker dealer in liquidation, but that such advances should not exceed \$50,000 for any one customer.

The conference substitute continues the \$50,000 limitation, but provides further that, insofar as all or any portion of a customer's claim is for cash (as distinct from securities), the amount advanced for such claim to cash shall not exceed \$20,000.

5. *Financial responsibility of broker-dealers.*—The House bill would have amended section 15(c)(3) of the Securities Exchange Act of 1934 so as to grant broad rule making authority to the Commission to promulgate rules to provide safeguards with respect to the financial responsibility and related practices of broker-dealers.

The conference substitute also provides for such broad rule making authority but strengthens it by requiring that the Commission promulgate such rules and by specifying that such authority includes authority to make rules relating to the acceptance of custody and use of customers' securities and the carrying and use of customers' deposits or credit balances. In addition, it specifies that such rules shall require the maintenance of reserves with respect to customers' deposits or credit balances.

The intent of the House provision has always been that the general authority granted to the Commission by the original House language includes the specific language now contained in the conference substitute. Your committee has been concerned about the need for a general upgrading of financial responsibility requirements of broker-dealers, and it recognized this when it stated in its report: "It is clear that the protections provided by the proposed SIPC fund are really only an interim step. The long-range solution to these problems is going to be found in the ultimate raising of the financial responsibility of the brokerage community." Your committee has always intended that the provisions of the House bill would give the Commission broad authority to deal effectively with this matter.

Two parts of the Senate amendment were extensively and thoughtfully discussed in the conference, but are not included, in their specifics, in the conference substitute. One of these parts sets forth, in detail, certain requirements for a broker-dealer with respect to the custody and use of customers' securities. The other would have, in effect, required entrance requirements for future broker-dealers before they would have been admitted into SIPC membership.

With respect to the detailed provisions on custody and use of customers' securities, it was the clear intent of your committee that the general authority provided in the amendment to section 15(c)(3) contained in the original House bill (and clearly the language of the conference substitute) grants to the Commission authority to set forth in Commission rules the details contained in the Senate amendment. By not embodying that detail in the legislation, the Commission's hand is stronger in that it has the flexibility to meet changing situations and needs. Indeed, a situation may develop in which the Commission determines that it is in the public interest to promulgate

rules even more restrictive than the specific provisions contained in the part of the Senate amendment in question. The Commission, under the conference substitute, has broad power, and it is expected that it will use that power in a strong and vigorous manner to protect the interests of investors and the public interest.

With respect to the entrance requirements for future broker-dealers, the conference substitute does not contain the specifics of the Senate amendment. Obviously, this amendment was designed to raise ultimately the standards in this industry, and your conferees strongly share that desire. However, your conferees believe that this, too, can better be handled by the broad grant of rule-making authority to the Commission in section 15(c)(3). In addition to having the advantage of flexibility, this also avoids the disadvantages which your conferees found in the Senate amendment—namely, the discriminatory features of having different standards for existing broker-dealers as opposed to broker-dealers registering in the future; and the situation in which the customers of some broker-dealers would be protected by the SIPC fund and the customers of other broker-dealers would not have such protection.

Your committee shares completely the concerns which are indicated by these parts of the Senate amendment. However, your conferees believe strongly that the concerns will be better and more flexibly handled by giving the Commission a broad delegation of authority to deal with financial responsibility and related practices of broker-dealers. Your conferees, as your committee, expect and direct the Commission to be vigorous in this area. As was stated in the debate on this bill on the floor of the House and in your committee's report: ". . . [Y]our committee directs and expects the Commission to be alert and strong in this area. This will, of course, require similar alertness and strength from the self-regulatory organizations, and if that is not forthcoming, the Commission and, if necessary, the Congress, will have to insure it."

5. Study of industry practices.—The conference substitute adds a provision which did not appear in any form in the original House bill. This provision requires that the Commission make a study of unsafe and unsound practices of broker-dealers, and that the Commission report to the Congress, within twelve months, the steps being taken to eliminate these practices and its recommendations for additional legislation which may be necessary to eliminate such practices.

6. Minimum initial assessments.—The House bill provided for an initial assessment of one-eighth of 1 percent of gross revenues from the securities business for 1969, with a minimum assessment of \$250.

The conference substitute also provides for an initial assessment of one-eighth of 1 percent but reduces the minimum assessment to \$150.

7. Required size of SIPC fund.—The House bill provided that the Securities and Exchange Commission could increase the ultimate size of the SIPC fund.

The conference substitute provides that the Commission may increase or decrease the ultimate size of the fund.

8. Public access to information.—The House bill provided that the public would have access to information about the affairs of SIPC unless SIPC or the Commission determined that disclosure would not

be in the public interest. The conference substitute contains this same provision.

The conferees' attention was focused on this provision, and they clearly intend that any documents or information shall be provided under conditions and in a manner which will assure that customers of SIPC members and the public interest in confidence in the securities markets will be protected.

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Managers on the Part of the House.

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